IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4860 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GUJARAT BANK WORKER'S UNION

Versus

VARAVAL MERCANTILE CO-OP. BANK LTD.

Appearance:

MR D.G.Shukla, for Petitioner

MR D.M. THAKKAR for Respondent No. 1

SERVED for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/11/97

ORAL JUDGEMENT

Heard the learned counsel for the parties. The facts which are not in dispute are as under:

The workman concerned was given the appointment on daily wager as clerk on 12.10.77 and his services were terminated on 10.12.78.

2. Only in case if the days of holidays on which he worked are taken as working days, then only he has completed 240 days of service within 12 calender months preceding the date of termination of his services. The petitioner Union filed the application under section 29(1) of the Bombay Industrial Relations Act challenging the termination of the workman concerned which application came to be dismissed by the Second Labour Court, Rajkot on 3.3.1983. Against this order of Labour Court, Rajkot, the petitioner filed an appeal being (IC) No. 423 of 1983 before the Industrial Court, State of Gujarat, Ahmedabad which came to be dismissed under the order dated 20.10.84.

3. The contention of the learned counsel for the petitioner is that the concerned workman has completed 240 days of service in 12 calender months preceding the date of termination and termination of the services of the workman was void ab initio as it has been made in violation of the provisions of Section 25(F) of the Industrial Disputes Act, 1947. Carrying this contention further, the learned counsel for the petitioner contended that whatever may be the reason for termination of the services of the concerned workman, it is a retrenchment and as such before doing so, the mandatory provisions as contained in the aforesaid section of the Industrial Disputes Act has to be complied with and admittedly, that provisions has not been complied with. In the case where retrenchment has been made without making compliance of the provisions of Section 25(F) of the Act of 1947 the Labour Court should have granted relief of reinstatement of the workman with full back wages and continuity of service.

4. On the other hand, learned counsel for the respondent no. 1 Mr. D.M. Thakkar contended that both the Courts have concurrently held that it is not a case of the relief of reinstatement with full back wages to be granted in favouf of the workman concerned. It has been next contended that it is a case of simpliciter discharge of the workman concerned on account of his unsuitability for the work which was entrusted to him. Unfitness for service or unsuitability for the work does not amount to misconduct and as such, it cannot be said that termination of service of the workman had been made by way of penalty. That order of the Labour court has been confirmed by the Industrial Court, State of Gujarat and this Court sitting under Article 227 of the Constitution may not interfere with the orders of those authorities.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

4. The workman concerned was given the appointment only on daily wages on which fact there is no dispute between the parties. It is true that the Labour Court has given a finding that if weekly offs are granted, then the working days of the concerned workman would come to more than 240 days. It is the case of the respondent employer that the provisions of section 25F of the Act, 1947 were not complied with for the reason that the workman had not completed 240 days. Firstly, from the findings in the judgment of the Labour Court, it transpires that taking everything in favour of the workman, it was taken to be a case of total working of 240 days, whereas after exclusion of five days of weekly offs, the working days come to 230 days. So, it is a case where there is a possibility of some bonafide mistake on the part of the respondent employer. Both the authorities below have proceeded on the ground that termination of services of the workman was ordered on account of his un-suitability for the work. The workman was working as clerk in the bank and many of defaults and mistakes committed by him have been brought on record of the proceedings and in the presence of those mistakes and defaults, I find that termination of services of the workman is a simpliciter discharge without having any stigma and it cannot be said to be a case of penalty. Both the authorities below having considered it to be a fit case where interference should not be made in the order of termination of the service of the concerned workman and this Court sitting under Article 227 of the Constitution is not exercising powers of the appellate authorities above those decisions. Against the orders of the authorities below, no appeal or revision has been provided before this Court under the the relevant Act and the intention of the Legislature is very obvious to give finality to the decisions of the authorities below. This court may not be justified in extending its jurisdiction under Article 227 of the Constitution of India in all the cases coming before it. This Court sitting under Article 227 of the Constitution of India cannot have unlimited prerogative to correct all the wrong decisions. It must be restricted to cases of gross deriliction of duty and flagrant abuse of fundamental principles of law or justice where grave injustice would be done unless this Court interferes. It cannot be gainsaid that the concerned workman was only a daily wager and daily wagers have no right to the post. As and when the work is available, the concerned workman would have been called

for the same and by working for a period of 240 or more days, he has not acquired any right to hold the post. Reference in this respect may have to the latest decision of the Apex Court in the case of Executive Engineer, (State of Karnataka) vs. Somasetchy reported in 1997(5) SCC,434. The services of daily wagers come to an end on the date itself or if he has been employed for fixed days, then on the last date of employment. In such matters, services come to an end by afflux of time and as held by this Court in the case of Bhanmati Tapubhai Muliya vs. State of Gujarat, reported 1995(2) GLH,228, no order of termination is required to be passed nor any notice is required to be given. It is true that the concerned workman was a workman and the respondent no.1 was an industry, but even if it is taken to be a case where termination of that concerned workman has been dispensed with without following the provisions of section 25(F) of the Act of 1947, still a question does arise whether in facts of this case, the workman should have been reinstated or the authorities below should not have interfered with the same. The grave facts of the case are that the concerned workman who was employed as a daily wager clerk even for a short period, he could not properly discharge his duties. The Labour Court of State of Gujarat has rightly pointed out that in the matters of making mistakes by him, it cannot be said to be a fit case where he should be ordered to be reinstated or taken back in service. It is a case of serving with the bank which deals with public at large. The suitability of a person is most important and relevant and in case if he is not found suitable for his duties, non-continuation of his daily wager employment in violation of the provisions of section 25 F of the Act of 1947 may not justify an order of reinstastement with full back wages and continuity of service in the given case.

5. Taking into consideration totality of these facts aforesaid, I do not find any illegality or error apparent on the face of the orders of the authorities below which justify interference of this Court under Article 227 of the Constitution of India. It is a case where in case this Court interfers, then it will cause a serious prejudice to the bank and its customers. Even a person who is taken on daily wages could not work to the satisfaction of the Institution, how far it is justified to ask the bank to reinstate the person with back wages and continuity of service.

6. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged with no order as to costs. Interim relief, if

any, granted by this Court, stands vacated.

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